

FILED

SEP 22 2004

Phil Lombardi, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MARGARET PARKS,

Plaintiff(s),

04CV731 E (M)

Case No. _____

v.

Removed from Tulsa County

HERBALIFE INTERNATIONAL OF
AMERICA, INC., and HERBALIFE
INTERNATIONAL, INC.,

Case No. CJ-2004-03094

Defendant(s).

NOTICE OF REMOVAL

Defendants, Herbalife International of America, Inc. and Herbalife International, Inc. (the "Herbalife Defendants"), by their attorneys, Eldridge Cooper Steichen & Leach PLLC, hereby remove the above captioned action, Case No. CJ 2004-03094, currently pending in the District Court in and for Tulsa County, State of Oklahoma, to the United States District Court for the Northern District of Oklahoma. As grounds for removal, the Herbalife Defendants state the following:

1. Plaintiff Margaret Parks commenced this action on or about May 11, 2004 by filing a Petition in the District Court in and for Tulsa County, State of Oklahoma, case no. CJ 2004 03094 (the "State Court Action").
2. Pursuant to 28 U.S.C. §§ 1446(a), 1441(a) and 116 (a) this Notice of Removal is being filed in the United States District Court for the Northern District of Oklahoma.

C/S
forms

3. Appended hereto as Exhibit A is a copy of all process, pleadings and orders served upon the Herbalife Defendants in the State Court Action, namely, the summons and petition. *See* 28 U.S.C. § 1446(a).
4. The summons and petition were received by service upon the Herbalife Defendants' registered agent in Oklahoma on September 10, 2004. Receipt of the summons and petition by the Herbalife Defendants on September 10, 2004 was the first notice of the State Court Action or federal jurisdiction. This Notice is being filed within 30 days after receipt by the Herbalife Defendants of the State Court summons and petition and within one year of the initiation of Plaintiff's action. *See* 28 U.S.C. § 1446(b).
5. The Herbalife Defendants will also file with the Clerk of the District Court in and for Tulsa County, State of Oklahoma, Notice of Removal pursuant to 28 U.S.C. § 1446(d).
6. Plaintiff alleges in the petition that at the time of the occurrence alleged in her petition, she was a resident and citizen of the State of Oklahoma, County of Tulsa.
7. Plaintiff's petition does not contain an allegation with respect to the place of incorporation or the principal place of business of Defendant Herbalife International, Inc. However, Defendant Herbalife International, Inc. is a Nevada corporation with its principal place of business in Los Angeles, California.
8. Plaintiff's petition does not contain an allegation with respect to the place of incorporation or the principal place of business of Defendant Herbalife International of America, Inc. However, Defendant Herbalife International of America, Inc. is a Nevada corporation with its principal place of business in Los Angeles, California.

9. No Herbalife Defendant is a citizen of Oklahoma State, where the State Court Action was brought. Accordingly, there exists diversity of citizenship of the parties pursuant to 28 U.S.C. § 1332(a)(1) both at the time of the filing of the State Court Action and at the time of the filing of this Notice of Removal, in that Plaintiff is a citizen of a different state from all of the Herbalife Defendants. See 28 U.S.C. § 1441(b).
10. Pursuant to OKLA. STAT. tit. 12 §§ 2008 (A), 2009 (G) Plaintiff has not set forth in her complaint the specific amount she seeks to recover in this products liability action other than to allege that the amount of actual damages exceeds \$10,000.00 and that the amount of punitive damages exceeds \$10,000.00. However, Plaintiff asserts three counts of liability, requesting actual damages (including damages for pain and suffering and for past and future medical expenses) and punitive damages. Accordingly, upon information and belief, the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.
11. Complaints alleging similar allegations and damages have been consolidated pursuant to 28 U.S.C. §1407, with the United States District Court for the Southern District of New York, In Re Ephedra Products Liability Litigation, MDL Docket No. 1598, a multi-district litigation ("MDL") proceeding established by the Judicial Panel on Multidistrict Litigation ("Judicial Panel") for the efficient handling of these cases from all over the country. Defendant intends to notify the Judicial Panel, that this action is a "tag-along" case that should be transferred to the MDL proceeding.
12. All parties properly joined and served as defendants in the State Court Action have joined in and consented to this Notice of Removal.


13. Based upon the foregoing, this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a)(1).

14. Pursuant to FED.R.CIV.P. 81(c), removing defendants hereby make demand for jury trial.

WHEREFORE, this action should proceed in the United States District Court for the Northern District of Oklahoma, as an action properly removed thereto.

ELDRIDGE COOPER
STEICHEN & LEACH P.L.L.C.

By


RICHARD M. ELDRIDGE, OBA# 2665
THOMAS E. STEICHEN, OBA# 8590
P.O. Box 3566
Tulsa, Oklahoma 74101-3566
(918) 388-5555 FAX (918) 388-5654

Attorneys for Defendants, Herbalife
International of America, Inc. and Herbalife
International, Inc.

CERTIFICATE OF MAILING

I hereby certify that on the 22 day of September, 2004, a true and correct copy of the foregoing was mailed with proper postage thereon prepaid to:

Mr. Walter D. Haskins
Mr. Scott R. Hall
Atkinson, Haskins, Nellis, Holeman, Brittingham, Gladd & Carwile
525 S Main St Ste 1500
Tulsa OK 74103-4524
Attorneys for Margaret Parks

Mr. James F. Self, Jr.
Self & Associates, Inc.
8720 S Pennsylvania Ste A
Oklahoma City OK 73159
Attorneys for Margaret Parks

0077-0002

ORIGINAL SUMMONS

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
500 SOUTH DENVER AVENUE, TULSA, OKLAHOMA 74103

MARGARET PARKS,

Plaintiff,

vs.

HERBALIFE INTERNATIONAL OF AMERICA, INC.,
and HERBALIFE INTERNATIONAL, INC.,

Defendants.

Case No.

CJ 2004 63094

Attorneys for Plaintiff:

Walter D. Haskins, OBA #3964

Scott R. Hall, OBA #16231

525 South Main, Suite #500

Tulsa, Oklahoma 74103

GREGORY K. FRIZZELL

TO THE NAMED DEFENDANT:

HERBALIFE INTERNATIONAL, INC.
c/o The Prentice-Hall Corp. System, NV.
502 East John Street, #E
Carson City, NV 89706

To Be Served by Certified Mail, Return Receipt Requested

You have been sued by the above named Plaintiff, and you are directed to file a written answer to the attached Petition and order in the court at the above address within twenty (20) days after service of this summons upon you exclusive of the day of service. Within the same time, a copy of your answer must be delivered or mailed to the attorney for the Plaintiff. Unless you answer the Petition within the time stated, judgment will be rendered against you with costs of this action.

Issued this

11 day of

May, 2004

SALLY HOWE SMITH, COURT CLERK

TULSA COUNTY COURT CLERK

By

Deputy Court Clerk

(Seal)

This summons and order was mailed Certified Mail, Return Receipt Requested on

September 7, 2004

(date of mailing)

(Signature of person mailing summons)

YOU MAY SEEK THE ADVICE OF AN ATTORNEY ON ANY MATTER CONNECTED WITH THIS SUIT OR YOUR ANSWER. SUCH ATTORNEY SHOULD BE CONSULTED IMMEDIATELY SO THAT AN ANSWER MAY BE FILED WITHIN THE TIME LIMIT STATED IN THIS SUMMONS.

Return ORIGINAL for filing.

33511summons-ly.wpd

EXHIBIT

A

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IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED

MAY 11 2004

MARGARET PARKS,

Plaintiff,

vs.

HERBALIFE INTERNATIONAL OF
AMERICA, INC., and HERBALIFE
INTERNATIONAL, INC.,

Defendants.

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

Case No: CJ 2004 03094

GREGORY K. FRIZZELL
JURY TRIAL DEMANDED
ATTORNEY'S LIEN CLAIMED

PETITION

COMES NOW the Plaintiff, Margaret Parks, by and through her attorneys of record, Walter D. Haskins and Scott R. Hall of the law firm of Atkinson, Haskins, Nellis, Holeman, Brittingham, Gladd & Carwile, of Tulsa, Oklahoma, and James F. Self, Jr. of Self & Associates, Inc. of Oklahoma City, Oklahoma, and for her cause of action against the Defendants, alleges and states as follows, to wit:

STATEMENT OF FACTS

1. That prior to January 6, 2003, the Plaintiff, Margaret Parks, ingested Herbalife Original Green, an over-the-counter "dietary supplement" containing Ephedra, marketed, processed and/or distributed by the Defendants, Herbalife International of America, Inc., and Herbalife International, Inc.
2. The Plaintiff alleges that Defendants' product, Herbalife Original Green, contained Ephedra and other ingredients that, in combination with Ephedra, the Defendants, and each of them, knew or should have known, would be hazardous not only to the Plaintiff, but also to the public as a whole.
3. As a result of ingesting the Defendants' product, Herbalife Original Green, the Plaintiff sustained physical injuries and developed health problems.

FIRST CAUSE OF ACTION

Strict liability - Defective Product

Plaintiff hereby incorporates by reference, all allegations set forth above for the purposes of her First Cause of Action, for which she further states and alleges:

4. That Defendants were in the business of designing, engineering, manufacturing, testing, inspecting, distributing, and selling Herbalife Original Green.

5. That Herbalife Original Green was defective at the time it left the control of the Defendants and by reason of said defects, was unreasonably dangerous to consumers, including the Plaintiff.

6. That Plaintiff's injuries and health problems were directly and proximately caused by the unreasonable dangerous and defective manufacturing and/or design of Herbalife Original Green.

SECOND CAUSE OF ACTION

Strict Liability - Failure to Warn

Plaintiff hereby incorporates by reference, all allegations set forth above for the purposes of her Second Cause of Action, for which she further states and alleges:

7. That the Defendants should have known of the unreasonable dangers, design, and/or manufacturing defects of Herbalife Original Green by reason of testing and/or investigating and/or other incidents.

8. That the Defendants failed to warn Plaintiff of the defects in Herbalife Original Green and the resulting dangers associated with her ingestion of this product.

9. That the acts and/or omissions of the Defendants in failing to provide adequate warnings, made Herbalife Original Green unreasonably dangerous to users of the product and constituted a violation of Defendants' pre-sale and post-sale duties to warn.

10. That Plaintiff's injuries and health problems were directly and proximately caused by the failure to adequately warn of the defects in Herbalife Original Green and the unreasonable dangers associated with the ingestion of same.

THIRD CAUSE OF ACTION

Negligence

Plaintiff hereby incorporates by reference, all allegations set forth above for the purposes of her Third Cause of Action, for which she further states and alleges:

11. That Defendants negligently designed, engineered, manufactured, tested, inspected, distributed, and sold Herbalife Original Green which directly and proximately resulted in the injuries and health problems sustained by Plaintiff.

12. That Defendants negligently failed to warn of the defects in Herbalife Original Green which directly and proximately resulted in the injuries and health problems sustained by Plaintiff.

Actual Damages

13. That, at the time of the occurrence, Plaintiff was a resident and citizen of Tulsa County, State of Oklahoma.

14. That as a result of the acts and/or omissions of the Defendants, as stated above, Plaintiff has suffered and will continue to suffer from numerous injuries and health problems.

15. That as a result of the acts and/or omissions of the Defendants, as stated above, Plaintiff has incurred and will incur past and future medical expenses, pain and suffering and all other damages compensable under Oklahoma law.

Exemplary Damages

16. Plaintiff alleges that the actions of the Defendants evidence a reckless, willful, intentional, and malicious disregard for the rights of others, with knowledge or reason to know that their actions and/or omissions would result in serious injury or death.

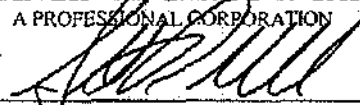
17. Plaintiff alleges that the Defendants should be punished by an award of exemplary damages, sufficient to deter these Defendants, and other similarly situated, from committing the acts and/or omissions detailed herein.

Prayer

WHEREFORE, Plaintiff, Margaret Parks, prays for judgment against the Defendants, Herbalife International of America, Inc., and Herbalife International, Inc., and each of them, for a sum in excess of Ten Thousand and No/100ths Dollars (\$10,000.00) in actual damages, in excess of Ten Thousand and No/100ths Dollars (\$10,000.00) in exemplary damages, or such greater or lesser sums as deemed fair and equitable by the jury, her costs and statutory interest, together with such other and further relief which is deemed by the Court to be fair, just, and equitable.

Respectfully submitted,

ATKINSON, HASKINS, NELLIS, HOLEMAN,
BRITTINGHAM, GLADD & CARWILE
A PROFESSIONAL CORPORATION



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ATTORNEYS FOR PLAINTIFF

and

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CO-COUNSEL FOR PLAINTIFF